

**Supporting Statement for
30 CFR Part 243 Suspensions Pending Appeal and Bonding
(Forms MMS-4435 and MMS-4436)
(OMB Control Number 1010-0122)
(Expiration Date: April 30, 2002)**

A. Justification

1. What circumstances make this collection of information necessary?

The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary. When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands.

The Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) of 1996, Pub. L. 104-185, as corrected by Pub. L. 104-200, amended portions of the Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982, 30 U.S.C. 1701 et seq. RSFA, Section 4, paragraph (I), "Stay of Payment Obligation Pending Review," requires MMS to evaluate any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) subject to RSFA to determine whether that person is entitled to a stay of the order without bond or other surety instrument pending an administrative or judicial proceeding (Attachment 1).

Implementing regulations at 30 CFR part 243 (Attachment 2), which govern the suspension of orders or decisions pending administrative appeal, allow lessees, designees, or payors who can demonstrate that they are financially solvent to stay the effectiveness of an MMS order or decision without posting a surety instrument (Federal leases only). For those who are not financially solvent or for appeals involving Indian leases, MMS requires that a surety instrument be posted to secure the financial interest of the public and Indian lessors during the entire administrative or judicial appeal process. This information collection request covers the burden associated with submitting annual audited financial statements or surety instruments required to stay an MMS order.

2. How, by whom, and for what purpose will the information be used?

A surety instrument is a formal guarantee of payment in case of default. MMS accepts the following types of surety instruments:

- Form MMS-4435, Administrative Appeal Bond;
- Form MMS-4436, Letter of Credit;
- Certificates of Deposit; and
- U.S. Treasury Securities.

Once one of the surety types is selected and put in place, the appellant must maintain the surety until completion of the appeal. If the appeal is decided in favor of the appellant, MMS's Minerals Revenue Management (MRM) returns the surety to the appellant. If the appeal is decided in MMS's favor, MRM takes action to collect full payment or draw down on the surety. MRM draws down on any surety if the appellant fails to comply with requirements relating to amount due, time frame, or surety submission or resubmission. Whenever MRM must draw down on a surety, the total amount due is defined as unpaid principal plus interest accrued to the projected receipt date of the surety payment. The five surety methods are discussed below.

Administrative Appeal Bond

Appellants may file Form MMS-4435, Administrative Appeal Bond (Attachment 3), which MRM uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. The Associate Director for MRM or the delegated bond-approving officer maintains these bonds in a secure facility. Once the appeal has concluded, the bond may be released and returned to the appellant or collected upon. If collection is necessary, MRM will issue a demand for payment that includes all interest assessed on the affected bill to the surety company with a notice to the appellant.

Letters of Credit (LOCs)

Appellants may choose to file Form MMS-4436, Letter of Credit (Attachment 4). The Associate Director for MRM or the delegated bond-approving officer maintains these LOCs in a secure facility. The LOC must be notarized and from a bank that has a minimum Fitch rating (formerly Bankwatch) of "C" for an LOC of less than \$1 million, "B/C" for an LOC between \$1 million and \$10 million, or "B" for an LOC over \$10 million. The appellant is responsible for verifying that the bank provides a current rating to MRM. Once the appeal has been concluded, the LOC may be released and returned to the appellant or collected upon. If collection is necessary, MRM will issue a demand for payment that includes all interest assessed on the affected bill to the bank with a notice to the appellant.

Self-bonding

For Federal leases only, no surety is required when a person periodically demonstrates to the satisfaction of MRM that he is financially solvent or otherwise able to pay the obligation. To evaluate the financial solvency of an appellant and to be exempt from requirements to maintain a surety related to an appeal, MRM requires an appellant to submit an audited, consolidated balance sheet. In some cases, MRM also requires copies of the most recent tax returns--up to 3 years--filed by the appellant.

Audited financial statements must be submitted annually to support the appellant's net worth. The audited, consolidated balance sheet or business information supplied to MRM is used to evaluate the financial solvency of a lessee, designee, or payor seeking a stay of payment obligation pending review. If appellants do not have an audited, consolidated balance sheet documenting their net worth, MRM selects a business information or credit reporting service to provide us with information concerning an appellant's financial solvency. We charge the

appellant a \$50 fee each time we need to review data from a business information or credit reporting service. The fee is needed to recover our costs to determine an appellant's financial solvency. The Associate Director for MRM or the delegated bond-approving officer uses this information to determine the financial solvency of a lessee, designee, or payor on the basis of their net worth.

Certificates of Deposit (CDs)

Appellants may choose to secure their debts by requesting to use a CD from their bank. The request must be filed with MRM prior to the invoice due date. MRM will accept a book-entry CD that explicitly assigns the CD to the Associate Director for MRM. If collection of the CD is necessary, unused CD funds will be returned to the appellant after total settlement of the appealed issues including applicable interest charges.

U.S. Treasury Securities (TS)

Appellants may choose to secure their debts by requesting to use a U.S. TS. The request must be filed with MRM prior to the invoice due date. MRM accepts a book-entry TS and is restricted to U.S. Treasury notes or bonds with maturity equal to or greater than 1 year. The TS must equal 120 percent of the appealed amount (necessary to protect MMS against interest rate fluctuations.)

3. Does the collection involve the use of information technology, does it reduce the burden, and to what extent?

The use of improved information technology is not applicable for this information collection. Our Government Paperwork Elimination Act Plan indicates that electronic transmission of this information is not practicable because the bonding and banking industry require original documents be submitted if draw-down is necessary. An electronic or telefax copy is not acceptable. This information collection does not require nor exclude the filing of the audited, consolidated balance statements by various forms of information technology. We will accept these statements from respondents by electronic means, telefax, or copy.

4. Is the information duplicated by any other Federal agency, and can similar information be used or modified for this collection?

The minimum required surety for Federal leases is \$10,000 and the minimum required surety for Indian leases is \$1,000. For sureties below the minimums, MMS makes use of existing Bureau of Land Management and Bureau of Indian Affairs lease bonds to secure the debts during appeal; therefore, there is no duplication. All other appealed amounts require one of the five surety types listed in this supporting statement to be in place. The information collected for those surety types is unique to each appellant and is necessary for MMS to properly secure the disputed debt. No other agency collects similar information from lessees, designees, or payors concerning self-bonding.

5. What is the agency doing to minimize the burden on small businesses or other small entities?

For small businesses that do not have audited, consolidated balance statements, they may request exemption from requirements to maintain a surety bond related to their appeal under the self-bonding option. Under this option, their credit information is accessed through a business information or credit reporting service selected by MRM. A processing fee is charged for this review. If these small businesses do not wish to have their credit information accessed, they have the option to post any of the surety types listed in Item 2 or pay the appealed bill in lieu of self-bonding. We have provided a variety of options for small businesses to secure the public's interests when appeals are made. The impact is minimal for any option a small business might take, although the fee charged to access a credit reporting service is in addition to other fees charged and increases the cost to small businesses for the appeal.

6. What are the consequences to the Federal program or policy activity if the information is not collected or is collected less frequently; and are there any technical or legal obstacles to reducing the burden?

If the proposed information collection is not conducted, the appellants cannot obtain the surety relief offered in RSFA section 4. MMS would then have to require sureties for each appeal, and appellants would incur the expense of supplying and maintaining sureties for every appeal. We cannot reduce the burden below an annual filing for surety relief because the financial status of appellants changes from year to year. We must be able to monitor an appellant's ability to pay disputed amounts in order to protect the public's interests in the minerals removed from Federal and Indian land.

7. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2) requiring respondents to: (i) report more often than quarterly, (ii) prepare written responses in fewer than 30 days after receipt, (iii) submit more than an original and two copies of any document, or (iv) retain records for more than 3 years?

There are no special circumstances that require exceptions to 5 CFR 1320.5(d)(2)(i) through (iv). There are also no special circumstances with respect to 5 CFR 1320.5(d)(2)(v) through (viii), as the collection is not a statistical survey and does not use statistical data classifications; nor does it include a pledge of confidentiality not supported by statute or regulation or require proprietary, trade secret, or other confidential information not protected by agency procedures.

8. What efforts did the agency make to consult with the public and a representative sample of respondents?

As required in 5 CFR 1320.8(d), MMS published a 60-day review and comment notice on January 14, 2002 (67 FR 1781) in the Federal Register (Attachment 5). We did not receive any comments in response to the notice. We maintain regular contact with respondents to this information collection by providing telephone assistance over toll-free lines and answering questions regarding the requirements. To date, there have been no comments relating to the burden of collecting this information.

9. Will payment or gifts be provided to respondents?

No payments or gifts will be provided to the respondents.

10. What assurance of confidentiality is provided to respondents?

This information collection contains confidential information. Information obtained through a third party business information or credit reporting services or through surety providers is considered proprietary and, therefore, will not be released. Trade secrets and proprietary information are protected in accordance with standards established by FOGPMA (30 U.S.C. 1733), the Freedom of Information Act [5 U.S.C. 552(b) (4)], and Department regulations (43 CFR 2). The Indian Minerals Development Act of 1982 (25 U.S.C. 2103) provides that all information related to any Indian mineral agreement covered by the Act in the possession of the Department shall be held as privileged proprietary information. Storage of such information and access to it is controlled by strict security measures.

11. Does the information collected include any questions of a sensitive nature?

None of the information requested is considered sensitive.

12. What is the estimated reporting and recordkeeping “hour” burden?

Regardless of the type of surety collected, the estimated reporting and recordkeeping burden is 1 hour. MMS estimates that there will be 136 bonds, 63 LOCs, 100 self-bonds, and 1 CD submitted each year. MMS has not had any TSs submitted as sureties but would estimate that they would also require 1 hour for reporting and recordkeeping. The table below shows a breakdown of the hour burden by CFR section and paragraph:

30 CFR Section	Reporting or Recordkeeping Requirement	Burden hours per response	Annual number of responses	Annual burden hours
243.4(a); 243.6; 243.7(a); 243.8(a)(2) and (b)(2); 243.101(b); 243.201 (d)(2)(ii); 243.202(c)	<p>If you timely appeal an order, and if that order or portion of that order requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency . . . If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order. . . If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency . . . you must notify MMS in writing . . . that you are assuming responsibility . . .</p> <p><u>Federal leases.</u> If the amount under appeal is \$10,000 or more, MMS will suspend your obligation to comply with that order if you (i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or (ii) Demonstrate financial solvency under subpart C.</p> <p><u>Indian leases.</u> If the amount under appeal is \$1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes.</p> <p>If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed . . . For us to consider you financially solvent, the business-information or credit -reporting service or program must demonstrate your degree of risk as low to moderate. If our bond-approving officer determines that the business-information or credit-reporting service or program information does not demonstrate your financial solvency to our satisfaction, our bond-approving officer will require you to post a bond or other surety instrument under subpart B or pay the obligation . . . If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.</p>	1	200	200

243.200(a) and (b); 243.201 (c)(1) and (2)(ii)	To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the MMS bond-approving officer, up to 3 years of tax returns to the MMS, Debt Collection Section . . . You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial solvency as long as you have active appeals, or whenever MMS requests. If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than \$300 million, you must submit . . . a written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and a nonrefundable \$50 processing fee. You must submit the fee with your request . . . and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency . . . and you have active appeals.	1	100	100
Total			300	300

As noted in the table above, we estimate that respondents will require 300 hours to suspend MMS orders under appeal. At an average cost of \$50 per hour, we estimate the total cost to respondents to be \$15,000 annually. There are no additional record keeping costs associated with this information collection.

13. What is the estimated reporting and recordkeeping “non hour” cost burden of the collection of information, excluding any costs identified in Items 12 and 14?

This collection of information does not require capital and start-up costs by respondents. However, we collect a processing fee each time we must consult a business information or credit reporting service for respondents that cannot comply with the audited, consolidated balance sheet requirement or for a publicly traded company that does not meet our established net worth of \$300 million. We estimate that 25 respondents will file this fee of \$50. Therefore, the total cost to respondents for payment of fees is \$1,250 (25 x \$50).

14. What is the estimated annualized cost to the Federal Government?

The estimated cost to the Federal Government is essentially the same for each type of surety instrument, approximately 1 hour per instrument. MMS estimates there will be 136 bonds, 100 self- bonds, 63 LOCs, 1 CD, and no TSs.

Administrative Appeal Bonds

We estimate that the burden to the Federal Government in the first year and in subsequent years for the processing, input, review, approval, and handling of the 136 bonds we receive is 136 hours (136 bond requests x 1 hour per bond). Using an estimate of \$50 per hour, we estimate the annual cost burden is \$6,800 (136 burden hours x \$50).

Self-bonding

MMS consults a business information or credit reporting service for all small entities or non-publicly traded companies that cannot comply with the audited, consolidated balance sheet requirement or for a publicly traded company that does not meet our established net worth of \$300 million. We estimate that 100 requests to self-bond will be made each year. We estimate 25 of those requests will require that we consult with a business information or credit reporting service. It will require approximately 25 hours to review the requests and process the inquiries (1 hour per inquiry). Using an estimate of \$25 per inquiry, we estimate the annual cost to access the business information or credit reporting service to the Federal Government will be \$625 (25 inquiries x \$25 per request).

The remaining 75 requests also require 1 hour to process at \$50 per hour. Adding the cost of the reports (\$625) to the costs incurred (100 requests x \$50 per hour) to review and process all self-bonding requests totals \$5,625. The burden to the Federal Government would be partially offset by \$1,250 in fees.

LOCs

We estimate that the burden to the Federal Government in the first year and in subsequent years for the processing, input, review, approval, and handling of the 63 LOCs we receive is 63 hours (63 LOC requests x 1 hour per LOC). Using an estimate of \$50 per hour, we estimate the annual cost burden is \$3,150 (63 burden hours x \$50).

CDs

We estimate that the burden to the Federal Government in the first year and in subsequent years for the processing, input, review, approval, and handling of the 1 CD we receive is 1 hour (1 CD request x 1 hour per CD). Using an estimate of \$50 per hour, we estimate the annual cost burden is \$50 (1 burden hour x \$50).

15. Is the agency requesting any program changes or adjustments reported in Items 13 and 14?

In Item 13, the current OMB inventory of 300 burden hours is unchanged by this ICR. In Item 14, the cost burden of \$1,250 (rounded to \$1,000)—a program change—is the result of a processing fee the respondents pay when MMS consults with a business information or credit reporting service.

16. Are there plans for tabulation and publication of the results of the information collection?

The data collected will not be tabulated and published for statistical use.

17. Is the agency seeking approval to not display the expiration date?

No. We will display the expiration date of OMB's approval on Forms MMS-4435 and MMS-4436.

18. Is the agency requesting exceptions to the certification statement in Item 19 of Form OMB 83-I?

To the extent the topics apply to this collection of information, we are not requesting exceptions to the "Certification of Paperwork Reduction Act Submissions."

B. Collections of Information Employing Statistical Methods

This section is not applicable. We will not employ statistical methods in this information collection.